

General Information Letter: Innocent spouse relief may be available to spouse who was unaware that no payment was made of liabilities shown on joint returns.

January 9, 2001

Dear:

Your email dated November 7, 2000 and addressed to the Office of the Attorney General has been forwarded to the Legal Services Office of the Illinois Department of Revenue for a response. In your email, you state the following:

I have been advised that if anyone knows of an illegal act and does not report such act, they are also guilty, therefore the reason for this letter. Recently my husband filed for a divorce, we have been separated since February 28, 2000. At the time of filing, I learned he has not paid any Illinois State Tax for at least ten(10) years. My question is: Even though we filed jointly, he being main and only care giver, am I guilty of anything? I know nothing about taxes, he always prepared them himself, just had me sign the papers.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill. Adm. Code §1200, or on the website <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Your letter indicates that you and your husband filed joint returns during the time you were married. According to Section 502(c)(1) of the Illinois Income Tax Act ("IITA"), "if a husband and wife file a joint federal income tax return for a taxable year they shall file a joint return under this Act for such taxable year and their liabilities shall be joint and several." Thus, the general rule is that both the husband and wife are liable for the entire amount of tax due for the years a joint tax return was filed.

Illinois recently added Section 502(c)(4) to the IITA, also known as the "Innocent Spouse Provision", which states the following:

an innocent spouse shall be relieved of liability for tax (including interest and penalties) for any taxable year for which a joint return has been made, upon submission of proof that the Internal Revenue Service has made a determination under Section 6013(e) of the Internal Revenue Code, for the same taxable year, which determination relieved the spouse from liability for federal income taxes. If there is no federal income tax liability at issue for the same taxable year, the Department shall rely on the provisions of Section 6013(e) to determine whether the person requesting innocent spouse abatement of tax, penalty, and interest is entitled to that relief.

Your letter mentions that you were advised "that if anyone knows of an illegal act and does not report such act, they are also guilty." In determining Innocent Spouse status, the department follows Section 6013(e) of the Internal Revenue Code. This section states that the spouse requesting relief must establish "that in signing the return he or she did not know, and had no reason to know, that

there was such substantial understatement". Accordingly, if a spouse signed a joint return knowing it was false, the spouse will not be relieved from liability.

In summary, you must provide the Illinois Department of Revenue with a completed IL-8857 to request Innocent Spouse relief. If you filed for Innocent Spouse with the Internal Revenue Service, simply attach a copy of your federal Form 8857 to the IL-8857. Form IL-8857 and attachments, if any, should be mailed to:

Illinois Department of Revenue
Attn: Problems Resolution Office
101 West Jefferson Street, Suite 5-500
Springfield, Illinois 62602

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

Sincerely,

Heidi Scott
Staff Attorney -- Income Tax